

### REMARKS

This Amendment is in response to the Office Action dated October 24, 2008. The claims are believed to be allowable for the same reasons urged in the July 22, 2008 Amendment, which reasons are not repeated here. In response to the October 24, 2008 Office Action, additional specific amendments are made herewith to address the issues raised in the Action. If any issue remains for resolution the undersigned would appreciate a telephone call to resolve such issue at direct dial telephone number 412-281-3350.

Figure 3 has been deleted from the present specification and Figure 4 (the highest numbered original Figure) renumbered as new Figure 3. New drawing sheets 1/17 to 17/17, each marked Replacement Sheet, are submitted herewith. The original Figure 3 was not intended to illustrate specific sequence information but only to show generally certain sequence similarities by region of six prior art genes as already known from Yokoi et al, 2002 as cited in the present specification. Because Figure 3 represented only previously published information as cited in the specification and was never intended to present sequence information *per se* in any case, it has been deleted herewith and therefore no additional SEQ ID NOs need to be assigned. Figure 4 has been renumbered as new Figure 3. The specification has been amended to attribute the sequence alignments to Yokoi et al., 2002, where they appear in the literature just as they did in the instant Figures before amendment. Original Figure 3 is not needed to support any of the previous or current pending claims of the present patent application. Deletion of original Figure 3 and renumbering of Figure 4 as new Figure 3 are thus appropriate and effective amendments to overcome the Examiner concerns stated in the October 24, 2008 Office Action.

The typographic error at the end of the first full paragraph on page 14, beginning at line 7, as submitted in the Amendment dated July 22, 2008, has been corrected herewith at the identification and request of the Examiner. A Statement of the Substance of the Interview also accompanies this Amendment.

### CONCLUSION

For reasons including those presented in the Amendment filed July 22, 2008 and herewith, claims 22, 25, 28-33 and 52-53 are now in condition for allowance. However, a Petition to Suspend is being filed contemporaneously herewith to allow Applicant time to pursue,

Application No. 10/559,097  
Amendment dated January 23, 2009  
In Reply to Office Action of October 24, 2008  
Attorney Docket No. 4559-053584

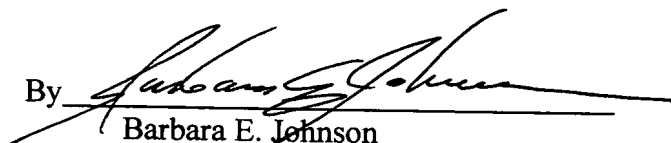
Petition to Suspend is being filed contemporaneously herewith to allow Applicant time to pursue, and to present if availability is confirmed, comparative results data that evidence unexpected improvements attributable to the use of certain promoters disclosed and claimed in the instant application and as set forth above.

Should any issue arise which can be resolved by telephone, the undersigned respectfully requests a telephone call to her direct dial number, 412-281-3350. Grant of the accompanying Petition to Suspend Action is respectfully requested.

Respectfully submitted,

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